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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9389]

RIN 1545-BG74

Disclosure of Return Information in Connection with Written Contracts Among the IRS, Whistleblowers, and Legal Representatives of Whistleblowers

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the disclosure of return information, pursuant to section 6103(n) of the Internal Revenue Code (Code), by an officer or employee of the Treasury Department, to a whistleblower and, if applicable, the legal representative of the whistleblower, to the extent necessary in connection with a written contract among the IRS, the whistleblower and, if applicable, the legal representative of the whistleblower, for services relating to the detection of violations of the internal revenue laws or related statutes. The temporary regulations will affect officers and employees of the Treasury Department who disclose return information to whistleblowers, or their legal representatives, in connection with written contracts among the IRS, whistleblowers and, if applicable, their legal representatives, for services relating to the detection of violations of the internal revenue laws or related statutes. The temporary regulations will also affect any whistleblower, or legal representative of a whistleblower, who receives return information in connection with a written contract among the IRS, the whistleblower and, if applicable, the legal

representative of the whistleblower, for services relating to the detection of violations of the internal revenue laws or related statutes. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These temporary regulations are effective on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Applicability Date: For dates of applicability, see §301.6103(n)-2T(f).

FOR FURTHER INFORMATION CONTACT: Helene R. Newsome, 202-622-7950 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6103(n) relating to the disclosure of return information in connection with written contracts among the IRS, whistleblowers and, if applicable, their legal representatives.

The Tax Relief and Health Care Act of 2006, Public Law 109-432 (120 Stat. 2958), (the Act) was enacted on December 20, 2006. Section 406 of the Act amends section 7623, concerning the payment of awards to whistleblowers, and establishes a Whistleblower Office within the IRS that has responsibility for the administration of a whistleblower program. The Whistleblower Office, in connection with administering a whistleblower program, will analyze information provided by a whistleblower, and either investigate the matter itself or assign it to the appropriate IRS office for investigation. In

analyzing information provided by a whistleblower, or investigating a matter, the Whistleblower Office may determine that it requires the assistance of the whistleblower, or the legal representative of the whistleblower. The legislative history of section 406 of the Act states that “[t]o the extent the disclosure of returns or return information is required [for the whistleblower or his or her legal representative] to render such assistance, the disclosure must be pursuant to an IRS tax administration contract.” Joint Committee on Taxation, Technical Explanation of H.R. 6408, The “Tax Relief and Health Care Act of 2006,” as Introduced in the House on December 7, 2006, at 89 (JCX-50-06), December 7, 2006. The legislative history further states that “[i]t is expected that such disclosures will be infrequent and will be made only when the assigned task cannot be properly or timely completed without the return information to be disclosed.” Id.

Under section 6103(a), returns and return information are confidential unless the Internal Revenue Code (Code) authorizes disclosure. Section 6103(n) is the authority by which returns and return information may be disclosed pursuant to a tax administration contract. Section 6103(n) authorizes, pursuant to regulations prescribed by the Secretary, returns and return information to be disclosed to any person, including any person described in section 7513(a), for purposes of tax administration, to the extent necessary in connection with: (1) the processing, storage, transmission, and reproduction of returns and return information; (2) the programming, maintenance, repair, testing, and procurement of equipment; and (3) the providing of other services. These temporary regulations describe the circumstances, pursuant to section 6103(n), under which officers and employees of the Treasury Department may disclose return

information to whistleblowers and, if applicable, their legal representatives, in connection with written contracts for services relating to the detection of violations of the internal revenue laws or related statutes.

Explanation of Provisions

General Rule

The temporary regulations, at §301.6103(n)-2T(a)(1), provide that an officer or employee of the Treasury Department may, pursuant to sections 6103(n) and 7623, disclose return information to a whistleblower and, if applicable, the legal representative of the whistleblower, to the extent necessary in connection with a written contract among the IRS, the whistleblower and, if applicable, the legal representative of the whistleblower, for services relating to the detection of violations of the internal revenue laws or related statutes. If a whistleblower has retained the services of a legal representative, then, in addition to the whistleblower, the whistleblower's legal representative must be a party to the written contract with the IRS. These temporary regulations do not provide for the disclosure of returns to whistleblowers or their legal representatives.

The temporary regulations, at §301.6103(n)-2T(a)(2), provide that the Commissioner has the discretion to determine whether to enter into a written contract with the whistleblower and, if applicable, the legal representative of the whistleblower, for services as described in §301.6103(n)-2T(a)(1). The IRS expects to enter into these contracts only infrequently, and any contract that is entered into, and any disclosures made pursuant to this type of contract, will be carefully tailored to the specific facts of the case.

Limitations

The temporary regulations, at §301.6103(n)-2T(b)(1), set forth the condition that the disclosure of return information in connection with a written contract for services described in §301.6103(n)-2T(a)(1) may be made only to the extent the IRS deems it necessary in connection with the reasonable or proper performance of the contract. In this regard, disclosures should relate to relevant taxable years and types of tax. The temporary regulations, at §301.6103-2T(b)(2), set forth the additional condition that if the IRS determines that the services of a whistleblower and, if applicable, the legal representative of the whistleblower as described in §301.6103(n)-2T(a)(1) can be performed reasonably or properly by disclosure of only parts or portions of return information, then only the parts or portions of the return information are to be disclosed.

The temporary regulations, at §301.6103(n)-2T(b)(3), provide that, upon written request by a whistleblower, or a legal representative of a whistleblower, with whom the IRS has entered into a written contract for services as described in §301.6103(n)-2T(a)(1), the Director of the Whistleblower Office, or designee of the Director, may inform the whistleblower and, if applicable, the legal representative of the whistleblower, of the status of the whistleblower's claim for award under section 7623, including whether the claim is being evaluated for potential investigative action, or is pending due to an ongoing examination, appeal, collection action, or litigation. This information may be disclosed only if the Commissioner determines that the disclosure would not seriously impair Federal tax administration.

The temporary regulations, at §301.6103(n)-2T(b)(4), impose the condition that return information disclosed to a whistleblower and, if applicable, a legal representative

of a whistleblower, may not be disclosed or otherwise used by the whistleblower or a legal representative of a whistleblower, except as expressly authorized by the IRS.

Penalties

The temporary regulations, at §301.6103(n)-2T(c), set forth the civil and criminal penalties to which whistleblowers and their legal representatives are subject for unauthorized inspection or disclosure of return information by operation of sections 7431(a)(2), 7213(a)(1), and 7213A(a)(1)(B).

Safeguards

The temporary regulations, at §301.6103(n)-2T(d)(1), provide that whistleblowers and their legal representatives who receive return information under these regulations must comply with all applicable conditions and requirements as the IRS may prescribe from time to time (prescribed requirements) for the purposes of protecting the confidentiality of the return information and preventing unauthorized disclosures and inspections of the return information (for example, requirements pertaining to computer security, physical security of return information, methods of destruction of return information).

The temporary regulations, at §301.6103(n)-2T(d)(2), provide that any written contract for services as described in §301.6103(n)-2T(a)(1) must provide that any whistleblower and, if applicable, the legal representative of a whistleblower, who has access to return information under these regulations shall comply with the prescribed requirements.

The temporary regulations, at §301.6103(n)-2T(d)(3), impose the requirement that whistleblowers, and their legal representatives who receive return information under

these regulations, must agree in writing, before any disclosure of return information is made, to permit an inspection of their premises by the IRS relative to the maintenance of the return information disclosed to them under these regulations and, upon completion of services as described in the written contract with the IRS, to dispose of all return information by returning the return information, including any and all copies or notes made, to the IRS, or to the extent that it cannot be returned, by destroying the information in a manner consistent with security guidelines and other safeguards for protecting return information in guidance published by the IRS.

The temporary regulations, at §301.6103(n)-2T(d)(4), provide that if the IRS determines that any whistleblower, or the legal representative of a whistleblower, who has access to return information under these regulations, has failed to, or does not, satisfy the prescribed requirements, the IRS, using the procedures described in the regulations under section 6103(p)(7), may take any action it deems necessary to ensure that the prescribed requirements are or will be satisfied.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**.

Pursuant to section 7805(f) of the Code, these regulations have been submitted to the

Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Helene R. Newsome, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6103(n)-2T also issued under 26 U.S.C. 6103(n); * * *

Par. 2. Section 301.6103(n)-2T is added to read as follows:

§301.6103(n)-2T Disclosure of return information in connection with written contracts among the IRS, whistleblowers, and legal representatives of whistleblowers (temporary).

(a) General rule. (1) Pursuant to the provisions of sections 6103(n) and 7623 of the Internal Revenue Code and subject to the conditions of this section, an officer or employee of the Treasury Department is authorized to disclose return information (as defined in section 6103(b)(2)) to a whistleblower and, if applicable, the legal

representative of the whistleblower, to the extent necessary in connection with a written contract among the Internal Revenue Service (IRS), the whistleblower and, if applicable, the legal representative of the whistleblower, for services relating to the detection of violations of the internal revenue laws or related statutes.

(2) The Commissioner shall have the discretion to determine whether to enter into a written contract pursuant to section 7623 with the whistleblower and, if applicable, the legal representative of the whistleblower for services described in paragraph (a)(1) of this section.

(b) Limitations. (1) Disclosure of return information in connection with a written contract for services described in paragraph (a)(1) of this section shall be made only to the extent the IRS deems it necessary in connection with the reasonable or proper performance of the contract. Disclosures may include, but are not limited to, disclosures to accomplish properly any purpose or activity of the nature described in section 6103(k)(6) and the regulations thereunder.

(2) If the IRS determines that the services of a whistleblower and, if applicable, the legal representative of the whistleblower, as described in paragraph (a)(1) of this section can be performed reasonably or properly by disclosure of only parts or portions of return information, then only the parts or portions of the return information shall be disclosed.

(3) Upon written request by a whistleblower, or a legal representative of a whistleblower, with whom the IRS has entered into a written contract for services as described in paragraph (a)(1) of this section, the Director of the Whistleblower Office, or designee of the Director, may inform the whistleblower and, if applicable, the legal

representative of the whistleblower, of the status of the whistleblower's claim for award under section 7623, including whether the claim is being evaluated for potential investigative action, or is pending due to an ongoing examination, appeal, collection action, or litigation. The information may be disclosed only if the Commissioner determines that the disclosure would not seriously impair Federal tax administration.

(4) Return information disclosed to a whistleblower and, if applicable, a legal representative of a whistleblower, under this section, shall not be disclosed or otherwise used by the whistleblower or a legal representative of a whistleblower, except as expressly authorized in writing by the Director of the Whistleblower Office.

(c) Penalties. Any whistleblower, or legal representative of a whistleblower, who receives return information under this section, is subject to the civil and criminal penalty provisions of sections 7431, 7213, and 7213A for the unauthorized inspection or disclosure of the return information.

(d) Safeguards. (1) Any whistleblower, or the legal representative of a whistleblower, who receives return information under this section, shall comply with all applicable conditions and requirements as the IRS may prescribe from time to time (prescribed requirements) for the purposes of protecting the confidentiality of the return information and preventing any disclosure or inspection of the return information in a manner not authorized by this section.

(2) Any written contract for services as described in paragraph (a)(1) of this section shall provide that any whistleblower and, if applicable, the legal representative of a whistleblower, who has access to return information under this section, shall comply with the prescribed requirements.

(3) Any whistleblower, or the legal representative of a whistleblower, who may receive return information under this section, shall agree in writing, before any disclosure of return information is made, to permit an inspection of his or her premises by the IRS relative to the maintenance of the return information disclosed under these regulations and, upon completion of services as described in the written contract with the IRS, to dispose of all return information by returning the return information, including any and all copies or notes made, to the IRS, or to the extent that it cannot be returned, by destroying the information in a manner consistent with security guidelines and other safeguards for protecting return information in guidance published by the IRS.

(4) If the IRS determines that any whistleblower, or the legal representative of a whistleblower, who has access to return information under this section, has failed to, or does not, satisfy the prescribed requirements, the IRS, using the procedures described in the regulations under section 6103(p)(7), may take any action it deems necessary to ensure that the prescribed requirements are or will be satisfied, including--

(i) Suspension of further disclosures of return information by the IRS to the whistleblower and, if applicable, the legal representative of the whistleblower, until the IRS determines that the conditions and requirements have been or will be satisfied; and

(ii) Suspension or termination of any duty or obligation arising under a contract with the IRS.

(e) Definitions. For purposes of this section--

(1) The term Treasury Department includes the IRS and the Office of the Chief Counsel for the IRS.

(2) The term whistleblower means an individual who provides information to the IRS regarding violations of the tax laws or related statutes and submits a claim for an award under section 7623 with respect to the information.

(3) The term legal representative means any individual who is a member in good standing in the bar of the highest court of any state, possession, territory, commonwealth, or the District of Columbia, and who has a written power of attorney executed by the whistleblower.

(f) Effective/applicability date. This section is applicable on **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

(g) Expiration date. This section will expire on **March 24, 2011**.

Linda E. Stiff,
Deputy Commissioner for Services and Enforcement.

Approved: March 12, 2008.

Eric Solomon,
Assistant Secretary of the Treasury (Tax Policy).

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